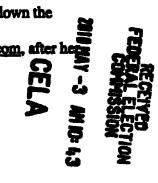
| 2                | BEFORE THE FEDERAL ELECTION COMMISSION  |
|------------------|---|
| <b>3</b>         | In the Matter of )  |
| 5<br>6<br>7<br>8 | MUR 6262 ) CASE CLOSURE UNDER THE SUSAN BITTER SMITH FOR ) ENFORCEMENT PRIORITY CONGRESS AND KELLY LAWLER, ) SYSTEM |
| 9<br>10          | IN HER OFFICIAL CAPACITY ) AS TREASURER )   |
| 11<br>12         | GENERAL COUNSEL'S REPORT  |
| 12               | GRADIE COUNSEL S REPORT   |
| 13               | Under the Enforcement Priority System, matters that are low-rated   |
| 14               |   |
| 15               | : are forwarded to the Commission with a recommendation for dismissal. The  |
| 16               | Commission has determined that pursuing low-rated matters, compared with other higher-                              |
| 17               | rated matters on the Enforcement docket, warrants the exercise of its prosecutorial                                 |
| 18               | discretion to dismiss these cases. The Office of General Counsel scored MUR 6262 as a                               |
| 19               | low-rated matter.   |
| 20               | In this matter, the complaint, filed by Luis Heredia, Executive Director of the                                     |
| 21               | Arizona Democratic Party, alleges that Susan Bitter Smith for Congress and Kelly Lawler,                            |
| 22               | in her official capacity as treasurer (collectively "the Committee"), violated                                      |
| 23               | 2 U.S.C. § 441b by failing to include proper disclaimers on what it alleges was the                                 |
| 24               | campaign's official website indicating that the website was paid for by the campaign, as                            |
| 25               | required by 11 C.F.R. § 110.11(a)(1).   |
| 26               | Susan Bitter Smith responded to the complaint, noting that she took down the  |
| 27               | campaign website for her 2008 Congressional primary race, www.Susan08.com, after her                                |



Case Closure Under EPS – MUR 6262 General Counsel's Report Page 2 of 3

- 1 primary defeat. She then put up a personal website paid for with her own funds,
- 2 <u>www.bittersmith.com</u>, which contained photos of community activities that Ms. Bitter
- 3 Smith participated in, and which "did not contain any information pertinent to any Federal
- 4 campaign, no speculation on any further race by me, no political opinion, no advocacy, and
- 5 no requests for fundraising." Ms. Bitter Smith states that this website was not a campaign
- 6 website and, therefore, did not require a disclaimer. In February 2010, when Ms. Bitter
- 7 Smith filed to be a candidate for the 2010 Arizona 5th District election, she established a
- 8 new campaign website, www.susan10.com, which contains the appropriate disclosures for a
- 9 campaign website. In her response she does state that "my personal site,
- 10 www.bittersmith.com, was linked to the campaign site [www.susan10.com] which again
- contained the appropriate disclosure." Upon receiving the complaint in this matter, she
- 12 deleted www.bittersmith.com from the web.
- 13 It appears from the screenshots attached to the complaint of Ms. Bitter Smith's
- 14 personal website, www.bittersmith.com, that at least through March 5, 2010.
- 15 <u>www.bittersmith.com</u> did have a graphic that appears to be her campaign logo at the top of
- 16 the website stating "Susan Bitter Smith Conservative Republican for Congress," and a
- 17 link stating "I'd appreciate your support in the 2010 campaign." This website has now been
- 18 taken down, as noted above, so it is not possible to determine whether this link led to the
- 19 candidate's official website, www.susan10.com, or elsewhere.
- 20 The Commission's regulations require disclaimers for "all Internet websites of
- 21 political committees available to the general public." 11 C.F.R. § 110.11 (a)(1). It appears
- 22 that, at least for a short period of time, <u>www.bittersmith.com</u> did include information

<sup>&</sup>lt;sup>1</sup> The Committee, which was the named respondent, did not respond to the complaint. However, Susan Bitter Smith appears to be responding personally on behalf of the Committee.

| 1                                | supporting Susan Bitter Smith's 2010 candidacy. However, www.bittersmith.com does not       |
|----------------------------------|---|
| 2                                | appear to have ever been the official website for either Susan Bitter Smith's 2008          |
| 3                                | Congressional primary campaign or her 2010 Congressional primary campaign. Based on         |
| 4                                | the statements made in the response, and the available information submitted by the         |
| 5                                | complainant, and in furtherance of the Commission's priorities and resources, relative to   |
| 6                                | other matters pending on the Enforcement docket, the Office of General Counsel believes     |
| 7                                | that the Commission should exercise its prosecutorial discretion and dismiss this matter.   |
| 8                                | See Heckler v. Chaney, 470 U.S. 821 (1985).   |
| 9                                | RECOMMENDATIONS   |
| 10<br>11                         | The Office of General Counsel recommends that the Commission dismiss                        |
| 12                               | MUR 6262, close the file, and approve the appropriate letters.                              |
| 13<br>14<br>15                   | Thomasenia P. Duncan<br>General Counsel   |
| 16<br>17<br>18<br>19<br>20<br>21 | Date  BY:  Gregory R. Baker  Special Counsel  Complaints Examination & Legal Administration |
| 23<br>24<br>25<br>26<br>27       | Jeff S. Vordan  |
| 28<br>29                         | Supervisory Attorney Complaints Examination   |
| 30<br>31                         | & Legal Administration  |
| 32<br>33<br>34                   | Audra Hale-Maddox   |
| 35<br>36                         | Attorney  |
| 37<br>38                         |   |